



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2003

Ms. Johanna A. Kubalak  
Assistant District Attorney  
Dallas County  
133 North Industrial Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2003-9073

Dear Ms. Kubalak:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192846.

The Dallas County District Attorney's Office (the "DA") received a request for the investigative file of a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information deemed confidential by statute. You state that the investigative file consists of information that is confidential pursuant to article 1.10D of the Insurance Code. Section 5 of article 1.10D of the Insurance Code provides in pertinent part:

(b) Any information or material acquired under this article by an authorized governmental agency is privileged and is not a part of any public record. Except as otherwise provided by law, an authorized governmental agency or an insurer that possesses or receives any information or material under this article may not release it to the public. The information or material is not subject to a subpoena, except a valid grand jury subpoena, unless, after reasonable notice to the insurer and authorized governmental agency and after a hearing, a district court determines that the public interest and any investigation by the authorized governmental agency will not be jeopardized by obeying the subpoena.

(c) An authorized governmental agency or the department provided with information or material may release it to any other authorized governmental agency or the department.

Subsection 1(a)(1) of article 1.10D defines an “authorized governmental agency” as:

(A) a duly constituted municipal, county, or state law enforcement agency of this or another state or a federal law enforcement agency; or

(B) the prosecuting attorney of any municipality, county, or judicial district of this state, another state, or of the United States.

You state that the investigation was initiated by the insurance fraud unit of the Texas Department of Insurance (the “department”), who then referred the matter to the DA for prosecution. We agree with your assertion that the DA is an “authorized governmental agency” under section 1 of article 1.10D. An authorized governmental agency provided with information or material from the department may only release it to another authorized agency or the department. *See* Ins. Code art. 1.10D, § 5(c). The requestor does not meet the definition of an “authorized agency” under section 1 of article 1.10D. Therefore, the DA must withhold the information from the requestor pursuant to section 5(b) of article 1.10D of the Insurance Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 192846

Enc. Submitted documents

c: Ms. Candace V. Heisserman  
Board of Nurse Examiners For the State of Texas  
P.O. Box 430  
Austin, Texas 78767-0430  
(w/o enclosures)